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U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

5 United States District Court
Northern District of Ohio
Eastern Division

7 David Zeger,) Case No.: 1:07 CV 2399
8 Plaintiff, Pro-Se,)
9 vs.) Magistrate Judge Baughman, Jr.
10 LOCK-IT-UP WEST, et al.,) MOTION IN LIMINE
11 Defendant(s))
12

13 I, DAVID ZEGER, PLAINTIFF PRO-SE, come now and move the court on Motion in Limine based
14 on the fact that the proposed testimony of the defendant's so-called expert witness, Frank Foti
15 Auctioneer and Appraisals, LLC., is neither relevant nor reliable. Rule 702 of the FRE (Federal Rules of
16 Evidence) requires the testimony "assist the trier of fact to understand the evidence or to determine a
17 fact in issue" goes to relevance by demanding a valid connection to the pertinent inquiry as a
18 precondition to admissibility. No such connection can be made between the subject property and Foti.

19 The *Kumho* court held that "the basic gate keeping obligation of a trial judge under *Daubert*
20 extends to include technical or other specialized knowledge." *Kumho* at II, A (citing *Daubert* at 589-590
21 (internal quotes omitted)). The nature of "technical or other specialized knowledge" at issue in the
22 instant involves methodology when determining valuation of personal property. Foti asserts his
23 expertise is derived primarily from "over 35 years in valuing antiques, collectibles and rare coins." ECF
24 Doc. 91-1, p. 7. However, the instant case at bar requires valuation of property outside Foti's alleged
25 expertise. While the subject property includes some antiques, collectibles and rare coins, the bulk of the
26 personality can not be categorized according to Foti's supposed experience. Neither has Foti personally
27 examined or inspected the subject property.

28 Furthermore, the *Kumho* court was most concerned with "the methodology employed by the
expert in analyzing the data obtained" and the basis for such analysis. In Re: *Carmichael v Samyang*

1 *Tires*, 1996 U.S. Dist. LEXIS 22431 6c. The *Kumho* court concluded "that *Daubert's* general principles
2 apply to the expert matters described in Rule 702. The Rule, in respect to all such matters, establishes
3 a standard of evidentiary reliability. 509 U.S. 590. It requires a valid... connection to the pertinent inquiry
4 as a precondition to admissibility. 509 U.S. at 592. And where such testimony's factual basis, data,
5 principles, methods, or their application are called sufficiently into question... the trial judge must
6 determine whether the testimony has a reliable basis in the knowledge and experience of the relevant
7 discipline." 526 U.S. 137 (In Re: 509 U.S. 590, 592 (internal quotes omitted)). *Kumho* established a 5
8 prong test in determining admissibility of evidence based upon reliability of expert testimony under Rule
9 702: 1) Whether a theory or technique can be and has been tested; 2) Whether it has been subjected to
10 peer review and publication; 3) Whether in respect to a particular technique there is a high rate of
11 known and potential error; 4) Whether there is standards controlling the technique's operation; And 5)
12 Whether the theory or technique enjoys general acceptance within a relevant scientific, technical or
13 other specialized community.

14 The Foti appraisal report fails test on all 5 prongs respectively. 1) Foti's theory or technique
15 involves appraisal based on property that he did not personally inspect or examine; 2) Foti's technique
16 and methodology employed in deriving valuation appraisal on property unseen is questioned or
17 condemned within the relevant community; 3) Naturally, any appraisal based on property where the
18 property is not available for inspection, is highly speculative and presents significant margin for error; 4)
19 USPAP is the governing branch under The Appraisal Foundation of which is authorized by Congress as
20 the source of appraisal standards and appraiser qualifications. Foti's appraisal report fails to meet such
21 standards. (See: ECF Doc. 92); 5) The case presently at bar before this court deals specifically with
22 replacement value, replacement cost, loss of use value and intrinsic value. The Foti Appraisal Report
23 does not include consideration on any one of these measurements.

24 It is obvious that Foti lacks sufficient knowledge to assist the jurors in deciding the particular
25 issues in the case currently at bar and should therefore not be admissible testimony.

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Respectfully submitted September 21st, 2009,

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CERTIFICATE OF SERVICE

A copy of the foregoing Motion was served by regular USPS mail and via email this 21st day of September, 2009 upon Attorney John Tarkowsky, 3 North Main Street, Suite 500, Mansfield, Ohio 44902, jtarkowsky@baranlaw.com.

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